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July 9, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, DC 20554

Re: IB Docket 97-142

Dear Mr. Caton:

Transmitted herewith on behalf of Telephone and Data Systems, Inc. by its attorneys, are an original and nine copies of its Comments in the above-captioned matter. There is also being provided to the Commission a copy on a diskette formatted in WordPerfect 5.1.

In the event there are any questions concerning this matter, please communicate with the undersigned.

Very truly yours,


George Y. Wheeler

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Rules and Policies on Foreign) IB Docket No. 97-142
Participation in the U.S.)
Telecommunications Market)
)

To: THE COMMISSION

COMMENTS OF TELEPHONE AND DATA SYSTEMS, INC.

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July 9, 1997

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SUMMARY

Telephone and Data Systems, Inc. and its subsidiaries propose that the Commission adopt revised procedures for the administration of Section 310(b)(4) of the Communications Act to apply to foreign ownership of registered securities issued by holding companies pursuant to the Securities Exchange Act of 1934. All indirect foreign ownership of common carrier radio licensees held in the form of such registered securities should be permitted, without Commission prior approval, when the foreign investor involved is from one of the 64 other WTO member countries which has "...committed to enforce fair rules of competition for basic telecommunications." (NPRM, ¶ 2).

Adoption of the WTO Agreement on Basic Telecommunications and of the Congressional mandate for regulatory forbearance in Section 10 of the Communications Act establish a compelling basis for establishing an appropriate safe harbor for expanded foreign passive investment in U.S. domestic carriers and avoiding unnecessary and burdensome regulatory procedures. The Commission has ample statutory authority under Section 310(b)(4) to respond to specific concerns of the Executive Branch using its license revocation powers. The Commission has available to it adequate means to "monitor" foreign ownership of registered securities using established reporting requirements of the SEC. There is no need to continue to burden publicly traded holding companies with unnecessary prior approval requirements in these circumstances.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
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Rules and Policies on Foreign)	IB Docket No. 97-142
Participation in the U.S.)	
Telecommunications Market)	
)	

To: THE COMMISSION

COMMENTS OF TELEPHONE AND DATA SYSTEMS, INC.

Telephone and Data Systems, Inc., on behalf of itself and its subsidiaries (collectively "TDS"), by its attorneys submits its comments in response to the Commission's Order and Notice of Proposed Rulemaking released June 4, 1997 in the above-captioned proceeding ("NPRM").

BACKGROUND

TDS is a diversified telecommunications service company with established cellular telephone, local telephone and radio paging operations and has recently launched personal communications operations. It conducts these operations through subsidiaries: United States Cellular Corporation (80.6%-owned); TDS Telecommunications Corporation (wholly-owned); American Paging, Inc. (82.3%-owned); and Aerial Communications, Inc. (82.8%-owned). Each of these subsidiaries in turn holds Commission licenses for common carrier wireless facilities through subsidiaries.

The approximately 54 million Common Shares of TDS are publicly traded on the American

Stock Exchange and are held by approximately 19,000 beneficial owners.¹ The Common Shares of United States Cellular Corporation and of American Paging, Inc. are also publicly traded on the American Stock Exchange and are held by approximately 3,700 and 2,400 beneficial owners, respectively.² The Common Shares of Aerial Communications are NASDAQ-traded and are held by approximately 3,200 beneficial owners.³

TDS and its subsidiaries are vitally interested in these proceedings because of the opportunities presented to diminish significantly the paperwork burdens imposed on Commission licensees under current Commission rules and policies for the administration of Section 310(b)(4) of the Communications Act. TDS presents new proposals to diminish the scope of the Commission's "prior approval" procedures as they apply to foreign ownership of the registered securities issued by holding companies like TDS and its subsidiaries.

RECOMMENDATIONS

Adoption of the WTO Basic Telecommunications Services Agreement ("WTO") in February of 1997 makes possible fundamental changes in the Commission's administration of Section 310(b)(4) of the Communications Act through the U.S. "...market opening offer of 100% indirect foreign ownership of common carrier licenses."⁴ TDS strongly supports the Commission's goals in these proceedings to implement the U.S. commitments under the WTO,

¹ Figures as of March 27, 1997.

² Figures as of March 27, 1997.

³ Figures as of March 27, 1997.

⁴ Communication from the United States - Conditional Offer (Revision) - S/GBT/W/1/Add.2/Rev.7, dated February 12, 1997 ("Offer").

to promote competition in U.S. telecommunications markets, and to provide publicly-traded holding companies relief from unnecessary and burdensome regulatory requirements.

The basic thrust of the Commission's proposed revisions to its current Section 310(b)(4), while laudable as proposed, should be expanded to create a safe harbor for foreign investors to encourage passive investments conferring indirect ownership in common carrier radio licensees.

Specifically, TDS proposes that the Commission adopt revised procedures to apply to foreign ownership of registered securities issued by holding companies pursuant to the Securities Exchange Act of 1934 ("1934 Act") as follows:

- All indirect foreign ownership of common carrier radio licensees held in the form of registered securities should be permitted up to 100 percent when the foreign investor involved is from one of the 64 other WTO member countries which has "...committed to enforce fair rules of competition for basic telecommunications." (NPRM, ¶ 2) The Commission's proposed prior approval procedures (NPRM, ¶ 72-76) should not apply in such circumstances.
- The Commission should establish related reporting requirements so that each common carrier radio licensee is required to report to the Commission all indirect foreign investments amounting to a five percent or greater beneficial or voting interest in any corporation which directly or indirectly controls such licensee. Use of established SEC Schedule 13D and Schedule 13G reporting procedures is proposed.
- The Commission should also establish related procedures under Section 310(b)(4) to be able to require the divestiture of any foreign ownership interest under the standards articulated in NPRM ¶ 75 in cases where circumstances warrant such action.
- The Commission's prior approval procedures should apply as proposed (NPRM, ¶ 72-77) with respect to the indirect foreign ownership of any common carrier licensee held in the form of registered securities by any foreign carrier, by investors from WTO member countries (other than the foregoing 64 countries) and by investors from non-WTO member countries. This approval process would be triggered when the combined total of indirect foreign ownership in any licensee by such carriers and investors is reasonably expected to exceed 25 percent.

The foregoing recommendations are not intended to limit in any way the Commission's prerogatives to make public interest determinations under Section 310(b)(4) in the context of initial licensing, assignment of license or transfer of control situations. These recommendations also distinguish between the investments of foreign carriers which have figured prominently in the Commission's recent declaratory rulings with respect to Sprint and MCI,⁵ among others, and foreign holdings acquired by non-carriers solely for passive investment purposes. The holdings of foreign carriers should continue to be subject to the Commission's prior approval procedures because of legitimate national interests in maintaining competitive markets for domestic and international services. The TDS recommendations also leave open the option for licensees to request prior Commission approval of any proposed foreign investment in circumstances where the parties decide to seek such a ruling. Nor do they conflict with the Commission's proposals for handling aeronautical and broadcast licenses.⁶ TDS supports the Commission's retention of full regulatory prerogatives in this regard.

DISCUSSION

1. TDS has recommended changes in the Commission's proposals which we believe recognize the special commitments made by the United States and 64 other WTO member countries to enforce fair rules of competition in basic telecommunications services.⁷ Non-carrier

⁵ See Sprint Declaratory Ruling and Order, 11 FCC Rcd. 11354 (1996), Sprint Declaratory Ruling and Order, 11 FCC Rcd. 1850 (1996), and MCI Declaratory Ruling, 10 FCC Rcd. 8677 (1995).

⁶ NPRM, ¶¶ 70 and 71.

⁷ TDS would have no objection if the Commission decided to expand this group
(continued...)

investors with citizenship or place of organization, as applicable, in any of these 64 countries should be entitled to hold registered securities conferring indirect ownership interests in common carrier radio licensees up to 100 percent. Such ownership should not only be presumed to be consistent with the public interest as tentatively concluded by the Commission (NPRM, ¶ 10), but also be permitted up to 100 percent without requiring Commission prior approval under Section 310(b)(4). This gives fair recognition to the special role these countries have assumed in facilitating the transition to open entry and procompetitive regulation of basic telecommunications services.⁸

The Commission should retain the right to cause the divestiture of any such ownership interests as currently provided in the language of Section 310(b)(4).⁹ In this manner, the regulatory forbearance which TDS recommends preserves the Commission's ability to react to

⁷(...continued)

to include all 68 countries referenced in its NPRM, ¶ 1.

⁸ Nor is such recognition contrary to U.S. commitments under the General Agreement on Trade in Services, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, Article II (1994). Article II addresses the possible preferential treatment of the "services and service suppliers" of one WTO member country vis-a-vis the "services and service suppliers" of another such country. Investment in the securities of U.S. carriers is clearly not covered by this provision. Given the domestic scope of the Commission's jurisdiction over radiofrequency uses, the regulatory forbearance proposed here clearly is not germane to the services provided by foreign carriers. Also, the TDS recommendations specifically exclude indirect ownership interests held by foreign carriers in common carrier radio licensees from the scope of the regulatory forbearance proposed here. The ownership interests of all foreign carriers from WTO member countries would be subject to the same "prior approval" procedures.

⁹ Section 310(b)(4) limits indirect foreign ownership in a common carrier radio licensee subject to a Commission finding "...that the public interest will be served by the refusal or revocation of such license." (Emphasis supplied).

“concerns raised by the Executive Branch” (NPRM, ¶ 75) at the same time facilitating expanded investment opportunities in the U.S. domestic telecommunications industry.¹⁰

TDS does not intend by reference to the foregoing 64 WTO member countries to imply that this list of countries could not be expanded. Both the number of WTO member countries making specific market entry commitments and the admission of new WTO members could reasonably result in expansion of the current 64 countries to a much larger number. The TDS recommendations anticipate this possibility and assume that over time the benefits of the regulatory forbearance proposed here will be extended to investors from a significantly larger number of countries.

2. Adoption of the foregoing recommendations is also intended to be as consistent as possible with the Commission’s original proposals for the use of prior approval procedures under Section 310(b)(4). (NPRM, ¶ 72-77). The continued use of such prior approval procedures in the circumstances of countries which have not made specific commitments to enforce fair rules of competition is reasonable and fair. If the TDS recommendations are adopted, the carriers and

¹⁰ This approach is particularly appropriate considering the alleviation of national security concerns cited by the Commission in its Cable & Wireless Declaratory Ruling (FCC 95-422), 10 FCC Rcd. 13177, 13180 (1995). As the Commission stated:

The original national security concerns about limiting foreign ownership in a parent corporation have been somewhat alleviated because today there is a plethora of service providers so that no single licensee can manipulate adversely the entire wireless or wireline services in the United States. (¶ 19, Fn. 21).

The rapid advances which the Commission has made in expanding common carrier licensing opportunities, particularly for U.S. domestic competitive wireless entry, during the last two years since this decision was adopted underscore the factual basis for this conclusion.

investors who would remain subject to prior approval procedures will still be significantly benefitted under the Commission's revised procedures.

TDS agrees with the Commission's proposed presumption that ownership interests of investors, including foreign carriers, from WTO member countries should be permitted to hold up to 100 percent ownership in common carrier licensees. (NPRM, ¶ 10). TDS also agrees that the Commission's ECO test¹¹ should be eliminated as part of the Section 310(b)(4) analysis relating to such interests (NPRM, ¶ 68) and should be retained for the analysis of such interests from non-WTO member countries. (NPRM, ¶ 69).

The Commission should make clear that its prior approval procedures are triggered when the combined total indirect foreign ownership in a common carrier radio licensee held by foreign carriers and by foreign investors who are not from the foregoing 64 WTO member countries exceeds the 25 percent statutory guideline. This is a sound administrative practice because it preserves flexibility for common carrier radio licensees to be owned to a limited degree by such investors and foreign carriers without triggering the Commission's Section 310(b)(4) prior approval procedures.

3. The TDS recommendations are directly responsive to the Congressional mandate for the Commission to "...forbear from applying any regulation or provision of this Act to a telecommunications carrier" as provided in Section 10(a) of the Communications Act of 1934, as amended (47 U.S.C. § 160(a)). Adoption of regulatory forbearance as proposed here will

¹¹ See Market Entry and Regulation of Foreign-Affiliated Entities, Report and Order, IB Dkt. 95-22, 11 FCC Rcd. 3873, 3889-3900, ¶ 40-72 (1995). ("Foreign Carrier Entry Order")

eliminate unnecessary burdens on common carrier radio licensees and permit the Commission to concentrate its valuable administrative resources in other high priority areas.

Significant record support for the forbearance is already demonstrated on the basis of the Commission's own analysis of the public benefits obtainable in these proceedings. The most prominent of the standards for Commission determinations under Section 10(a), "...promotion of competition among providers of telecommunications services,"¹² clearly would be supported by adoption of the TDS recommendations. As the Commission has stated:

"...[W]e believe that facilitating foreign investment in U.S. wireless markets will significantly enhance competition in these markets."¹³

The Commission's related conclusions regarding "...little concern with anticompetitive conduct as a result of foreign investment in [U.S. wireless markets]" and the avoidance of "unnecessary regulatory burdens"¹⁴ are also strong support here.

4. The TDS recommendations also reflect the generally diminished regulatory scrutiny which the Commission has given to the analysis of ownership holdings of foreign investors in publicly traded holding companies. In both of the Commission's Sprint Declaratory Rulings,¹⁵ the Commission referenced "widely dispersed foreign ownership in Sprint," foreign ownership by "passive investors," and a "dominant U.S. presence among Sprint's officers, directors and

¹² Section 10(a)(3) and (b).

¹³ NPRM, ¶ 73.

¹⁴ Ibid.

¹⁵ Sprint Declaratory Ruling and Order, 11 FCC Rcd. 11354, 11358 ¶ 12-13 (1996) and Sprint Declaratory Ruling and Order, 11 FCC Rcd. 1850, 1865-1866 ¶ 95 (1996).

shareholders” in authorizing expanded foreign ownership. Similarly in MCI Declaratory Ruling,¹⁶ the Commission cited “passive and widely dispersed [foreign] investors,” in support of authorizing expanded foreign ownership in that carrier. Significantly, both Sprint Declaratory Rulings which post-date the Commission’s Foreign Carrier Entry Order, approved expanded foreign ownership levels without attempting to apply the Commission’s ECO analysis to the “widely held” portion of foreign ownership of Sprint’s registered securities. The recent Loral SpaceCom decision¹⁷ similarly contains no analysis of foreign ownership of the registered securities of Loral Ltd. under Section 310(b)(4). Adoption of our recommendations is a reasonable extension of the principles and practices established in these cases.

5. The TDS recommended shift in the Commission’s processing procedures under Section 310(b)(4) will not result in diminished Commission capacity to “monitor” industry developments to fulfill its statutory responsibilities. TDS agrees with the Commission that the need for such monitoring even in cases of foreign ownership interests held by investors from the 64 WTO member countries will remain.

TDS believes that effective and non-burdensome Commission monitoring can be implemented based on existing reporting requirements which already apply to publicly traded companies under Section 13 of the Securities and Exchange Act of 1934 and related regulations. The public interest is clearly benefitted by the efficient use of such established reporting resources. Section 13 requires that any person who acquires beneficial ownership, whether

¹⁶ MCI Declaratory Ruling, 10 FCC Rcd. 8697, 8698 ¶ 9 (1995).

¹⁷ In the matter of AT&T Corp. and Loral SpaceCom Corporation For Authority to Assign Licenses, Order and Authorization, (DA 97-125), 12 FCC Rcd. 925 (1997).

indirectly or directly, of more than five percent of any class of voting equity security registered under the 1934 Act must file a "Schedule 13D" report with the Security Exchange Commission ("SEC") within ten days after reaching that five percent threshold, unless the person qualifies to file a "Schedule 13G." If the person qualifies to file a Schedule 13G, such report must be filed within 45 days after the end of the calendar year. These reports are required to be provided to the company which issued the securities involved so that these reports are available for filing with the Commission, if required. The foregoing reports include the identity of the beneficial owner, residence, citizenship or place of organization, the nature of the acquisition as well as other information.

Using the Schedule 13D and 13G reports, the Commission would be able to monitor the foreign ownership of registered securities of holding companies by investors from the 64 WTO member countries. This could be accomplished by requiring common carrier radio licensees to file such reports with respect to all ownership by investors from the 64 WTO member countries upon request.

The Schedule 13D and 13G reports clearly provide a level of detail which would be adequate for Commission monitoring purposes here. It is triggered by 5 percent threshold based on each class of voting equity security so that it is likely to reveal useful information about holdings which are a relatively small percent of a company's total equity. Also the beneficial interest of the foreign investor required in Schedule 13D or 13G will tend to overstate rather than understate foreign ownership for Commission purposes because there is no provision for the use

of a multiplier, such as in the case of a partially U.S.-owned foreign investor. In sum, the Commission would get highly useful information without imposing unnecessary new paperwork burdens.

CONCLUSION

TDS has recommended a significant departure from the Commission's traditional "prior approval" procedures for the administration of Section 310(b)(4) for two principal reasons. First, the WTO Agreement on Basic Telecommunications Services presents an obvious opportunity for the Commission to revise its regulatory approach. Second, the 1996 adoption of the regulatory forbearance mandate in Section 10 of the Communications Act plainly anticipates that the Commission will look for ways to eliminate unnecessary or burdensome procedures, particularly where there are adequate alternative means for the protection of consumer interests.

Prior approval procedures with respect to the indirect ownership by foreign non-carrier investors from the 64 WTO member countries should be eliminated. The Commission has ample statutory authority under Section 310(b)(4) to respond to specific concerns of the Executive Branch using its license revocation powers. The Commission also has available to it adequate means under the existing reporting requirements of the SEC to monitor foreign ownership of registered securities. There is no reason to continue to burden publicly-traded holding companies with unnecessary prior approval requirements when the Commission has available adequate, non-

intrusive, and non-burdensome methods to fulfill its responsibilities to U.S. consumers.

Respectfully submitted,

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